IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2848 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.R.TRIPATHI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BABULAL CHIMANLAL BHIL

Versus

THRO' SECRETARY

Appearance:
GIRISH PATEL ASSOC for Petitioner
MR SP HASURKAR for Respondent No. 1

CORAM : MR.JUSTICE R.R.TRIPATHI

Date of decision: 24/04/2000

ORAL JUDGEMENT

#. Rule. Mr.Digant Joshi, learned A.G.P. on behalf of

the respondent waive service of rule.

#. Mr.Girish Patel, learned advocate for the petitioner is challenging the order passed by the authorities on 28.3.2000 whereby the representation made by the petitioner is turned down and the order of reversion dated 13.9.1999 is upheld and is approved. Mr.Patel, learned advocate pointed out that earlier a Spl.C.A. No.7184/99 was filed by the present petitioner challenging the said revision order and in that Spl.C.A.. this court passed an order on 2.12.1999. The petitioner was asked to make a representation to the authorities. The relevant portion of the order of this court in the earlier petition is as under :-

"(i) The revision order passed against the petitioner on 13th September 1999 as has been stayed by this Court on 21st September 1999 shall further remain in abeyance for a period of three months from today.

(ii) It will be open for the petitioner to make a representation before the Government on the grounds as he may feel advised to take so as to seek exemption from passing the departmental examination as aforesaid. Such representation shall be made by the petitioner before the Government within a period of ten days from today.

(iii) Should the petitioner make any such representation, the Government shall decide the same within a period of three months as aforesaid and the petitioner's further continuance on the post of Assistant Director will depend upon the orders which may be passed by the Government and conveyed to him.

(iv) In case the petitioner's representation is not accepted with regard to exemption from the departmental examination, appropriate orders shall be passed by the Government so as to take effect after a period of 15 (fifteen) days from the date of receipt of such order by the petitioner. In case the order is passed before the expiry of the period of three months, the reversion order would not remain in abeyance for full period of the three months as directed at (i) as above but would remain abeyance only until the expiry of 15 days from the date such order is served upon the petitioner."

#. It is after the aforesaid order that the present order came to be passed. Perusal of the impugned order will reveal that all the contentions raised by the petitioner were considered by the authority in detailed and the authority has set out the detailed reasons for not accepting the contention/representation made by the petitioner. It is specifically mentioned in the said order that as the requirement of the passing departmental examination is necessary, there is no possibility of giving any exemption from the same and request of the petitioner for granting exemption on the ground of his age of 45 years is rejected. The second contention of the petitioner regarding the uncertainty of the departmental examination which the petitioner is required to pass is also turned down by the said order by setting out that after the petitioner was appointed to the post of Superintendent as many as 17 times the examination was held by the department. It is also noted in the order that the petitioner did not make any attempt to appear in the said examination. So far as the contention of the petitioner regarding he having passed the two departmental examination while he was serving in the Agricultural Department is also dealt with appropriately. It is stated that after the petitioner came to be appointed to the post of Superintendent in the Tourism Department, his mode of recruitment and nature of work both changed and therefore under the relevant rules the petitioner was required to pass the departmental examination. Lastly it is mentioned in the order that the petitioner was given the reasonable opportunities of hearing and it was only after affording the opportunity of hearing that the said order came to be passed.

#. The learned advocate Mr.Patel attacked the said order dated 28.3.2000 mainly on the ground that it was not clear to the petitioner as to which departmental examination the petitioner is required to pass. The said contention was raised before this court in the earlier petition and the same was raised before the respondent authority also. The same is dealt with by this court as well as the authority, I need not deal with the same again . It is also contended by Mr.Patel that the departmental examination which was prescribed under 1973 Rules is not applicable to the petitioner and that the petitioner could not have been directed to pass the said examination. The said contention also can not be accepted and hence the same is rejected. Mr.Patel has also urged that the petitioner was never informed about the departmental examination, while, other persons/employees were given the intimation about the

departmental examination. It may be true that the department might not have given a specific intimation to the petitioner but then it cannot be accepted wheld that the petitioner who was holding the post of Superintendent in the Department did not know about the examination held by the department and more particularly when the department had held as many as 17 examinations after the appointment of the petitioner. Mr.Patel submitted that there are circular to the effect that if the department is not able to hold the examination or if it is found that employee is not at fault in not appearing the departmental examination, the employee should be given an exemption from passing the said examination. More particularly when the employee has completed the age of 45 years. In view of the settled legal position that once the rules which is statutory in nature provide for departmental examination, no exemption can be granted contrary, to such rules the said point is considered by the authority in light of the detailed representation made by the petitioner. It is also submitted by Mr.Patel that the authority did not consider the points which are raised hereinabove and that the authority ought to have taken into consideration that the petitioner had passed the two departmental examinations earlier and therefore he was not required to pass the higher departmental examination while holding the post of Superintendent in the Tourism Department. In view of the detailed discussion about these submissions in the order of this court in Spl.C.A. No.7184/99 and in view of the affidavit-in-reply which is filed by the respondent authority the said points also do not find any favour hence the petition is rejected.

#. Mr.Patel submitted by virtue of the interim order of this court issued in earlier petition and thereafter by the judgment and order of this court dated 2.12.1999 whereby that petition was disposed of the petitioner is continuing to hold the post of the Assistant Director Tourism till date. It is the request of Mr.Patel that the interim relief may be continued in favour of the petitioner so as to enable the petitioner to file an appeal against this order. The request of Mr.Patel is reasonable hence the interim relief granted earlier shall continue upto 8.5.2000. Mr.Hasurkar, Learned Additional G.P. is objecting to the order of continuing of the interim relief granted earlier. The said objection is overruled in light of the fact that the petitioner is continued on the post from the date of reversion is 13.12.1999 no harm or prejudice is going to be caused to the respondent if the interim relief is continued upto 8.5.2000. Rule is discharged with the aforesaid

direction.

kks